
From: Keith Miller

Date: Wednesday, October 18, 2017 at 4:41 PM

To: Adrienne Klein <adrienne.klein@bcdc.ca.gov>, "McCrea, Brad@BCDC" <brad.mccrea@bcdc.ca.gov>

Subject: Public comment on BCDC Permit App No. 1985.019.11B

Hi guys - I could not find a place to comment on-line so here is my official comment which I hope can be read at the meeting which I cannot make. Thank you - Keith

I object to the Applicants request for 3 temporary and 1 permanent bollard in the Application. These are not needed and add a nuisance and eyesores.

1) When the pavilion is in private use the Jack London Square Vehicle Access Plan (VAP) precludes vehicles from entering the area. *If* the VAP is enforced there is NO NEED for temporary bollards. If not enforced, the violators will be Scott's guests/vendors who should be monitored by Scott's employees. VAP violations are historically a result of Scott's failing to police its own people and events.

2) The permanent bollard will protect walls Scott constructed from Scott's vehicles and, infrequently, a California Canoe & Kayak vehicle. There is no history of this wall structure ever being hit or damaged by a vehicle. This service area does not need a permanent obstruction in the common delivery area protecting Scott's from its own vehicles.

- Keith Miller, California Canoe & Kayak

Keith Miller, President
California Canoe & Kayak, Inc.
409 Water Street
Oakland, CA 94607
510 893 7833
www.calkayak.com

Agenda Item #8

October 17, 2017

COPY

SF Bay Conservation and Development Commission
455 Golden Gate Avenue Suite 10600
San Francisco, CA 94102

sent via email

Dear Executive Director Goldzband and Commissioners:

Waterfront Action, Inc. has just received a copy of the BCDC staff report for the Scott's Pavilion permit application to be heard on October 19, 2017. There are a number of strong points Waterfront Action supports in the application:

1. Maximum of 73 days' private use mode
WE cannot support any additional private use days
2. A public website denoting use days which will enable the public to know when it is open to all.
3. Lighting for improved access through the Plaza
4. Installation and maintenance of four public access signs

Please contact me if there are any questions regarding Scotts' Pavilion at 510-336-1817.

Sincerely,

Sandra Threlfall

Sandra Threlfall
Executive Director

Subject: Scott's pavilion permit application

Date: Tuesday, October 17, 2017 at 10:31:11 PM Pacific Daylight Time

From: Naomi Schiff

To: Goldzband, Larry@BCDC, Klein, Adrienne@BCDC

Dear BCDC Commissioners and BCDC staff,

I would like to associate myself with the Waterfront Action letter of October 17, 2017, and reiterate two of the points highlighted in their communication:

1. Maximum of 73 days in private use: I'd point out that as a maximum, I'd hope Scott's would actually use fewer days than this. I would firmly oppose any future application for additional days, and request to be alerted should any such request be submitted. 72 days is 20% of each year; any increase would bring into question whether the space is in fact public.
2. I think the idea of a public website clearly delineating availability to the public would be great, and facilitate better public access to the space.

Thank you very much for your continuing efforts to preserve our coastline for the people of California.

Sincerely,

Naomi Schiff
Oakland resident

Naomi Schiff
238 Oakland Avenue
Oakland, CA 94611

Telephone: 510-835-1819
Email naomi@17th.com

cell: 510-910-3764

Subject: Re: Comments, Permit Application No. 1985.019.11B. Scott's Jack London Seafood Inc.

Date: Friday, October 6, 2017 at 7:38:52 PM Pacific Daylight Time

From: Naomi Schiff

To: Klein, Adrienne@BCDC

Thank you for your after hours reply! I attended the enforcement hearings held after Scott's behaved as scofflaws for years. It seems that this current request is to make the already egregious intrusion more permanent and more private, and that is what I object to. I couldn't believe, so many years ago, that they would have the chutzpah to weld stuff onto publicly paid-for hardscape elements, and I've seen the takeover of public facilities gradually increasing ever since. I get that they have curried political favor, but I hope BCDC will not allow further encroachments and takeovers.

Are they trying to schedule more than 73 events per year now?

I am trying to understand what new things they are attempting to get permission for. So I will read over more carefully what was sent and then request to see whatever elements represent changes. I think these owners are all too similar to the original robber barons that stole the Oakland waterfront in 1852!

You may have seen my name because I have occasionally visited BCDC over the years, on behalf of the Coalition of Advocates for Lake Merritt, the Measure DD Coalition, and Oakland Heritage Alliance; I participate in all three. I don't think I am on the list for all BCDC materials; probably I received this because I attended the earlier hearings on Scott's. As you can tell, I am pretty fed up with Scott's, even though I know people who work there and hold events there. But it is more important that we keep public land public.

Thanks,

Naomi

Naomi Schiff
238 Oakland Avenue
Oakland, CA 94611
510-835-1819

Cell (less reliable; best to call number above): 510-910-3764

Email: Naomi@17th.com

On Oct 6, 2017, at 7:27 PM, "Klein, Adrienne@BCDC" <adrienne.klein@bcdcc.ca.gov> wrote:

Dear Ms. Schiff,

Thank you for writing to BCDC about your concerns with the upcoming public hearing regarding the Scott's pavilion.

The permit previously authorized the pavilion in 1996 and its use for up to 73 private events/year. Therefore, the use of the space for events is not the subject of this hearing. It will be to consider the replacement of fabric canvas panels with a combination of permanent walls and retractable wall panels, to enclose the pavilion for the authorized private events.

If interested, will gladly send you a copy of the existing permit on Monday. I would have done so now but I am unable to access our electronic folders.

You are welcome to review the permit file at our office next week but please schedule an appointment first. I am also available to speak with you by telephone next week.

I am unfamiliar with the procedure for requesting a later date but I will inquire with staff counsel on Monday. In the meantime, I do not expect the matter to be cancelled as the 14-day notice provided for this matter is the same as is provided for all matters that go before the Commission. In addition, several months ago, the applicants posted a public notice of their application at the project site and as of my last visit to the property on August 30th, it was still posted.

The Commission welcomes oral public comments at its meetings and written

public comments to be submitted in advance of the meeting, or both. Please feel free to submit written comments to the Commission to my attention or, if you prefer, to the attention of Executive Director Larry Goldzband.

This matter has been the subject of two Enforcement Committee meetings, on October 20, 2016, and and February 16, 2017, and two Commission hearings on November 3, 2016, and April 6, 2017. On April 7, 2017, the Commission issued Cease and Desist and Civil Penalty Order No. CDO 2017.01. You may review the Order and all the materials that lead to its issuance at these links located on our website:

<http://www.bcdc.ca.gov/meetings.html>

If you are not currently receiving, and would like to receive, notices of enforcement matters going before the Enforcement Committee, please advise me to add your name and email address to our list of interested parties.

I assume, but please correct me if I am mistaken, that you received today's mailing as someone who regularly receives the Commission meeting notices and materials. If this is the case, I hope you also received notice of the two enforcement proceedings that occurred at the November 3, 2016, and April 6, 2017, Commission meetings. Please advise.

Your name is very familiar. If inclined, please share any affiliation you may have and, also, please let me know how I can further assist you in making your concerns known to the Commission.

Sincerely,

Adrienne

Adrienne Klein

Chief of Enforcement

SF BCDC

455 Golden Gate Ave., Suite 10600

San Francisco, CA 94102-7019

Direct: (415) 352-3609

Main: (415) 352-3600

<http://www.bcdc.ca.gov>

Please identify the appropriate BCDC permit and enforcement case file numbers in the subject line of your response.

From: Naomi Schiff <Naomi@17th.com>
Date: Friday, October 6, 2017 at 5:12 PM
To: Adrienne Klein <adrienne.klein@bcdc.ca.gov>
Subject: Comments, Permit Application No. 1985.019.11B.

Dear Ms. Klein,

I request postponement of this item, and I request a copy of the entire application. This very major incursion into our public waterfront requires study, discussion with the public, and perhaps some legal counsel, and 1.5 weeks is insufficient time, as this is the first I have heard of it.

Can you please advise me on

- a) how to get the complete application
- b) procedure for requesting a later date
- c) how BCDC publicizes beyond a tiny list, and how it facilitates adequate public comment on major destruction of public space in a city which already has limited access to the waterfront?

Thank you,

Naomi Schiff
Oakland Resident

Naomi Schiff
238 Oakland Avenue
Oakland, CA 94611
510-835-1819

Cell (less reliable; best to call number above): 510-910-3764

Email: [**Naomi@17th.com**](mailto:Naomi@17th.com)

Subject: Scott's addition

Date: Monday, October 16, 2017 at 12:38:10 PM Pacific Daylight Time

From: Judith Iglehart

To: Klein, Adrienne@BCDC

After reading through all of this material, what Scott's did was to bypass the requirements and build out onto public space. Why would you want to reward those actions by granting the proposal?

Thank you,

Judith Iglehart, EdD
President, International Division
KEIRETSU FORUM
44 Tehama
San Francisco CA 94105
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(510) 545-3416 Google Voice
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*Keiretsu Forum Is the Number 1 US Funder of Startup Companies
With members in 52 locations on 3 continents*

*"Technology can be a vehicle to help people create and collaborate better,
but at the end of the day, people need to learn to work with people." (Marina Bers)*



Subject: Re: Scott's addition

Date: Monday, October 16, 2017 at 12:51:35 PM Pacific Daylight Time

From: Judith Iglehart

To: Klein, Adrienne@BCDC

Just to let you know that I am unable to attend the meeting due to scheduled appointments. Please know that I reside at 311 2nd Street in Oakland and the public space at JLS is an important reason that I chose to live in this neighborhood. Best. Judi Iglehart

Judith Iglehart. Sent from my iPhone. Please excuse any spelling variations.

On Oct 16, 2017, at 12:47 PM, Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov> wrote:

Dear Judith,

Thanks for writing to BCDC. Just left you a voice mail message.

Your email will be presented to the Commission on Thursday. You may also address the Commission in person.

Sincerely,

Adrienne

Adrienne Klein

Chief of Enforcement

SF BCDC

455 Golden Gate Ave., Suite 10600

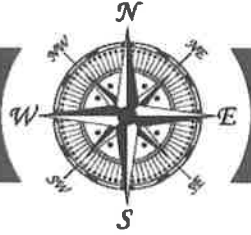
San Francisco, CA 94102-7019

Direct: (415) 352-3609

Main: (415) 352-3600

<http://www.bcdc.ca.gov>

Please identify the appropriate BCDC permit and enforcement case file numbers in the subject line of your response.



RUDDER LAW GROUP

JOSHUA SAFRAN
(510) 384-7627
JSAFRAN@RUDDERLAWGROUP.COM

October 13, 2017

Marc A. Zeppetello, Chief Counsel
SF BCDC
455 Golden Gate Ave., Suite 10600
San Francisco, CA 94102

(By Email)

**Port of Oakland's Objection to
Proposed Monitoring & Reporting Requirements
BCDC Permit Application No. 1985.019.11B
(Material Amendment No. Eleven)**

Dear Mr. Zeppetello:

Thank you for the opportunity to review and comment on the Application Summary prepared by Staff, dated October 6, 2017, for consideration by the San Francisco Bay Conservation and Development Commission ("BCDC") on October 19, 2017. We provide the following comments and requests on behalf of our client, the City of Oakland, acting by and through its Board of Port Commissioners ("Port" or "Port of Oakland"):

We very much appreciate BCDC's consideration of the subject application, and are grateful for Staff's support for the removal of the Port of Oakland as a permittee from the subject permit. As you know, and as the record in this matter makes abundantly clear, the Port's involvement in and support of the subject application is predicated on the primary objective of delinking the Port of Oakland—a public agency with oversight of a major seaport, airport, and thousands of acres of commercial real estate—from the day-to-day business decisions of a private, for-profit restaurant such as Scott's Jack London Seafood, Inc. ("Scott's").

As we have discussed with BCDC at length, the Port is in no way a joint-venturer with Scott's. The Port does not participate in Scott's activities and has less oversight authority over such activities than BCDC does. While the Port does hold the land underlying Scott's in trust for the people of the State of California, it is not, for BCDC's enforcement purposes, a typical landlord. Scott's holds a 54-year, triple-net, ground lease from the Port that will not revert to the Port until 2041. The Port does not exert operational control of Scott's activities and, when it needs to exercise the police power against tenants such as Scott's, it turns to enforcement agencies such as BCDC, as it did in the underlying enforcement action that led to the subject application.

As the record makes clear, at BCDC's Enforcement Committee Hearing on February 16, 2017, and again at the full BCDC Commission Hearing on this matter on April 6, 2017, the Port indicated that BCDC's historical insistence that the Port serve as a co-permittee to Scott's put the Port in an unacceptably untenable position. Such a requirement created a Catch-22 whereby the Port diligently investigated Scott's unlawful construction, promptly reported it to BCDC and the City of Oakland for enforcement action and, then, BCDC declined to take timely enforcement action and blamed the Port for Scott's alleged bad acts. Further, it must be noted that using what powers it had under its Lease, the Port sent Scott's no less than 9 cease and desist demands, gave a formal Notice to Cure, and then sent a Notice of Default to initiate enforcement action against Scott's. Yet, the Port's enforcement efforts were functionally sabotaged by BCDC's subsequent negotiations (without enforcement) over a long five-year period, allowing Scott's to claim it was "proceeding in good faith to cure violations" as required of it under the subject lease.

For these reasons, the Port formally proposed to the Commission, as indicated in the administrative record, that either: (1) BCDC Permit 19-85(B) be revoked; or, (2) that the Port be fully removed from BCDC Permit 19-85 (B) as a co-permittee and that the subject permit be issued only to Scott's, if it were to be reissued at all. Compelling the Port to serve as a powerless middleman is simply anathema to the Port and the public it serves. It was, therefore, a discomfiting surprise to the Port to find that BCDC Staff's Application Summary asserts in footnote 1 on page 2: "The Port's permit will also require the Port to monitor Scott's private use of the pavilion and report the results to BCDC."

This was never discussed with the Port of Oakland, is contrary to the Port's own application submittal language on the subject amendment to Permit 19-85(B) and the Port strenuously objects to this monitoring and reporting requirement.

It is this very entanglement with Scott's that the Port seeks to avoid through the subject application. Placing the Port in the middle between BCDC and Scott's not only runs up the costs and human resources of a public agency that does not have suitable enforcement powers to cure violations of BCDC conditions, it exposes the Port to additional liability. BCDC is fully capable of requiring that Scott's submit reports pertaining to the use of the subject pavilion directly to BCDC Staff. There is no reason that the Port needs to be involved in this use reporting obligation. While the Port was ultimately completely dismissed as a respondent to BCDC's Violation Report/Complaint for the Imposition of Administrative Civil Penalties, Enforcement Investigation No. ER2013.009 ("Complaint") by the Commission in April of 2017, that Complaint specifically blamed, and sought significant civil penalties against the Port for violation of just such a condition.

As a reminder, the Complaint alleged a permit violation for Scott's' failure to submit to the Port a quarterly calendar of events which would indicate its frequency of usage of the subject pavilion. As part of that alleged violation, the Complaint also added a violation claim against the *Port* for failing "to submit to BCDC by March 1st of every year, a summary of the scheduled events for the previous year." Put simply,

BCDC was alleging that because Scott's failed to submit event information to the Port, the Port necessarily failed to pass on that information to BCDC. BCDC was unreasonably requiring that the Port pass on information unavailable to it and sought significant civil penalties against the Port for such failure.

While the Port believes that reporting on the use of the subject pavilion by Scott's is certainly a reasonable condition to place on Permit 19-85(B), there is no reason that Scott's cannot simply supply that data directly to BCDC. BCDC staff can monitor this permit condition just as they must surely monitor other conditions of other permits issued to applicants throughout the Bay Area. There is no reason to encumber the Port with this responsibility.

• • •

For all of these reasons, the Port of Oakland once again asks that it be removed from the subject permit, as reflected in the application duly submitted by the Port and Scott's, without any monitoring and reporting requirements being imposed upon the Port for Scott's compliance with permit 19-85(B). Alternatively, if the Port cannot be fully removed and released from the subject permit requirements and obligations, the Port must reiterate its prior request that Permit 19-85(B) be revoked.

Thank you for your attention to and assistance with this matter.

Very truly yours,



Joshua Safran

cc: Lawrence J. Goldzband, BCDC Executive Director (by email)
Michael P. Verna, Esq., Bowles & Verna LLP (by email)
Danny Wan, Port Attorney (by email)
Richard Sinkoff, Dir. of Environmental Programs and Planning (by email)
Pamela Kershaw, Director of Commercial Real Estate (by email)



Richard T. Bowles	Cathleen S. Huang
Michael P. Verna	Ethan K. Friedman
Robert I. Westerfield	William T. Nagle
Richard A. Ergo	Cheryl A. Noll
K.P. Dean Harper	Michael T. Krueger
Bradley R. Bowles	Mallory L. Homewood
Kenneth B. McKenzie	Shelley A. Molineaux
Jason J. Granskog	Jonathan W. Lee
Lawrence D. Goldberg	Daniel J. Zarchy

[Of Counsel]
Bruce C. Pallenghi

October 16, 2017

Via Email and U.S. Mail

Lawrence J. Goldzband
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San Francisco Bay Conservation and
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Brad McCrea
Regulatory Director
San Francisco Bay Conservation and
Development Commission
bradm@bcdc.ca.gov

**Re: Objection to Permit Consitions and Hearing on October 19, 2017
Staff Recommendation on BCDC Permit Application No. 1985.019.11B
(Material Amendment No. Eleven); Installation of a New Public Pavilion
Enclosure System at the Franklin Street Plaza by Scott's Jack London
Seafood Inc., at Jack London Square, in the City of Oakland, Alameda
County**

Dear Director Goldzband, Mr. Zeppetello, and Mr. McCrea:

Scott's has taken the opportunity to review Staff's recommendations on Permit Application No. 1985.019.11B (the "Scott's Permit") received on October 13, 2017 related to its efforts with BCDC and the Port of Oakland (the "Port") to improve public access and the overall experience in both public and private use of the pavilion and the public's enjoyment of what will be an improved Franklin Street Plaza area.

Scott's Amended Permit Application

Scott's and its team have worked diligently to address the points raised by BCDC Staff and the Port since the parties' resolution of the Violation Report and subsequent issuance of the final Cease and Desist and Civil Penalty Order No. COO 2017.01 ("C&D Order"). While Staff recommends approval of Scott's amended permit application, it has imposed either wholly unwarranted conditions upon Scott's, or a deadline which is impossible for Scott's to meet, thereby placing Scott's in a position where it must OBJECT to approval of its own permit

Lawrence J. Goldzband
BCDC Executive Director
October 16, 2017
Page 2

application with BCDC as including unfair and unrealistic conditions to which Scott's never agreed and which have no impact on public access to the Pavilion area. The two conditions relate to staff's arbitrary and capricious deadline of December 15, 2017 for Scott's to install a new door system at the Pavilion and to remove a wooden curtain backdrop. Neither of these were mentioned at all in the C&D Order.

Installation of New Door System

Section II.E of staff's recommended resolution for the Commission to adopt mandates that:

"By no later than December 15, 2017, the permittee (Scott's) remove the unauthorized Permanent metal entry doorway (east side) and six bollards south of the Pavilion, and install two additional retractable wall panels with doors and one door each in the west and north walls. . ."

This timetable cannot be met, as the panels and doors cannot be fabricated by December 15, 2017. Scott's had no prior notice from Staff that it intended to impose this impossible deadline at any point in the last six months since the C&D Order was issued. Not once did Staff ask Scott's how long it will take to custom craft, from design and engineering through production and delivery, a new door system to replace the existing one following removal of the metal frame Scott's has already applied to remove. Nor did Staff inquire about fabrication of the unique track system for this part of the pavilion. Had Staff asked, they would have been informed that custom fabrication for these components takes several months.

Further, Staff never suggested to Scott's that its application as filed was going to be approved, so that it should commence fabrication of the components months ago at a cost of tens of thousands of dollars. Rather, Staff has *unilaterally proclaimed*, as of three days ago, without any discussion with Scott's, that as a condition of permit approval, Scott's must remove the current metal door frame and have the new doors and track designed, built, delivered and installed by December 15th, or Scott's will be in violation. This is a set up—there is no way for Scott's to meet this deadline. If Staff persists in imposing this impossible condition on the permit, then Staff should be prepared to explain to the full Commission when it cites Scott's for violating it why they recommended inclusion of this arbitrary deadline when it they knew it was beyond Scott's ability to comply. This condition should be removed and replaced with a date that is based on the fabrication, delivery, and installation schedule of the third party vendors involved.

Furthermore, public safety mandates that the removal of the metal door frame and installation of the new custom door panels occur at the exact same time. The current fire safety exit system utilizes flaps hung on the metal door frame. There is no presently constructed and viable alternative in place to allow guests to quickly and safely exit the pavilion onto Franklin

Lawrence J. Goldzband
BCDC Executive Director
October 16, 2017
Page 3

Plaza should the metal door frame be removed *before* the new door system has been installed. Again, if Staff proceeds with this recommendation, Scott's will be forced to choose between compliance and protecting public safety. BCDC should not be advocating against public safety. As with the installation of the panels and doors, the December 15, 2017 arbitrary deadline should be eliminated and replaced with a date that is achievable based on input from the third party vendors. Notably, not once did Staff seek any input from Scott's, or its vendors, as to the viability of removing the metal door frame before installation of the new panels and doors.

Wooden Curtain Backdrop

Section II.F of Staff's recommended resolution states that:

"By no later than December 15, 2017, the permittee (Scott's) shall remove the unauthorized permanent wooden, painted stage backdrop mounted around the door of the storage area. The exposed surface shall be treated as necessary to be visually clean and consistent with the surrounding materials. . ."

This condition is arbitrary, capricious, and baffling. It serves to accomplish nothing as regards public access and goes beyond BCDC's mandate and jurisdiction. Nothing in the C&D Order deals in the slightest with the wooden curtain backdrop. Nor does the C&D Order confer on Staff the ability to make interior design and cosmetic choices for Scott's leased space. In point of fact, the wooden backdrop has been a source of entertainment and joy for users of the pavilion for many years and has added to the overall positive experience for guests at both public and private events. Not a single complaint has been made about this, nor does the backdrop impact public access one iota.

The suggestion that this backdrop somehow "privatizes" the space and should be removed and replaced at each event is laughable. The wood curtains are heavy, solid items that cannot be removed and rehung at will. Years of events at the pavilion have utilized the stage with backdrop curtains and Scott's has never received any objection to their presence. They do not privatize any portion of such a massive public space and have been more than offset by the tremendous improvements Scott's has agreed to make to public access to the Franklin Street Plaza area as a whole through the addition of new furniture, signage, lighting and the refurbishment of many existing items. In fact, Scott's has agreed to do everything else BCDC and the Port have asked.

December 15, 2017 Overall Deadline

With regard to the December 15, 2017 compliance deadline as a condition for permit approval, no one from Staff ever asked Scott's how long it would take to acquire all of the new furniture items, lighting and to accomplish the refurbishment of existing items. The suggestion

Lawrence J. Goldzband
BCDC Executive Director
October 16, 2017
Page 4

that Scott's needed to invest well over \$150,000 to do these things *before* it was informed that BCDC would even grant its amended permit application is unrealistic and unfair. To be told on October 13, 2017 that that as a condition of permit approval every condition must be completed by December 15, 2017 renders this whole exercise futile, as Scott's cannot comply with this deadline for the reasons above stated.

Continuance of the October 19, 2017 Hearing

Today, in a phone conversation with Staff, I requested a short continuance of the October 19, 2017 Commission hearing to November 2, 2017 on the grounds that Scott's principal and founder, Ray Gallagher (who seeks to be heard on these issues and to respond to the commissioners' questions personally) is currently ill and is under medical orders not to leave his home at this time. I also pointed out my commitment to be in Chicago this Thursday and thus my unavailability for this hearing. Note Staff unilaterally scheduled this hearing without any input from our office or Scott's, and notified us of the objectionable conditions being added to the Permit only 3 days ago (on October 13, 2017). Forcing the hearing to proceed under these circumstances is a denial of Scott's due process rights.

There is no prejudice to BCDC in continuing this matter for two weeks, yet Staff refused to commit to this modest request. We ask that a continuance to the November 2, 2017 calendar be granted, as inclusion of these objectionable conditions (of which Scott's was given no advance notice until three days ago) must be discussed with the Commission by the principal for Scott's and its lead counsel. Refusal to grant this short continuance suggests Staff is trying to steamroll this matter through without a complete response from Scott's in an effort to set Scott's up for an immediate permit violation, as Scott's cannot comply with the above conditions stated in Staff's recommendation. Scott's has acted in good faith and cooperated with the BCDC for the last several months in an effort to satisfy all issues for permit approval. But it cannot agree to conditions that are impossible for it to meet or are otherwise unnecessarily costly and burdensome with no impact on public access—and Staff should not be trying to impose such conditions and ramrod them through a hearing with Ray Gallagher and his lead counsel are unavailable.

Denial of Scott's 15% Civil Penalty Reduction

Lastly, Scott's has formally objected to and appealed Director Goldzband's denial of Scott's 15% civil penalty reduction. No response to that objection and appeal has been received to date. Scott's hereby incorporates all of its points and arguments raised therein and has attached a true and correct copy of its appeal as Exhibit "A" hereto for the Commissioners' consideration. In short, the key issue which cost Scott's a total of \$59,304.00 was its omission of an email address on a cc line of emails reporting its data to the Port of Oakland as it has always



Lawrence J. Goldzband
BCDC Executive Director
October 16, 2017
Page 5

done. Scott's respectfully submits that the omission of an email address is vastly different from a failure to compile and transmit the data, which Scott's did every month.

We ask that this letter be submitted to the Commission along with Staff's October 13, 2017 Recommendation, and that it be made part of the public record. Thank you.

Very truly yours,



MICHAEL P. VERNA

cc: Joshua Safran, Esq. (Port of Oakland)
Elizabeth Gallagher (Scott's)

EXHIBIT A to October 2017 Correspondence

{00486309.DOC; 1}



Richard T. Bowles	Cathleen S. Huang
Michael P. Verna	Ethan K. Friedman
Robert I. Westerfield	William T. Nagle
Richard A. Ergo	Cheryl A. Noll
K. P. Dean Harper	Michael T. Krueger
Bradley R. Bowles	Mallory L. Homewood
Kenneth B. McKenzie	Shelley A. Molineaux
Jason J. Granskog	Jonathan W. Lee
Lawrence D. Goldberg	Daniel J. Zarchy

~~Of Counsel~~
Bruce C. Paltenghl

September 27, 2017

Via Email and U.S. Mail

Lawrence J. Goldzband
Executive Director
San Francisco Bay Conservation and
Development Commission
455 Golden Gate Avenue, Ste. 10600
San Francisco, CA 94102
lgoldzband@bcdc.ca.gov

**Re: Objection to/Appeal of BCDC (L. Goldzband) September 15, 2017 Letter:
Determination that Scott's has not Fully Complied with Commission Cease
and Desist and Civil Penalty Order No. COO 2017.01**

Dear Director Goldzband:

Scott's hereby objects to your determination that "Scott's has not complied fully and in a timely manner with each and every applicable requirement of the Order and has not maintained full compliance with the Order and the permit through September 1, 2017" and to your finding that "Scott's shall not be entitled to a waiver of 15% of the total penalty amount." Scott's respectfully submits the following appeal. Absent reversal of your decision, Scott's asks that a hearing before the full commission be immediately scheduled to determine Scott's compliance with the Cease & Desist Order ("Order") in accordance with Section III.J thereof.

As set forth in detail below and in the attached exhibits, Scott's has complied with each of its reporting requirements under both the Permit and the Order. Further, Scott's has ensured that the appropriate furniture and signage is present and properly located at all possible times, and has reduced the number of events held at the pavilion.

Initially, your September 15, 2017 letter ("Letter") recognizes that Scott's and the Port of Oakland have satisfied their requirements to submit a fully complete and properly executed application to amend Scott's permit for the pavilion within the time limit(s) specifically provided by BCDC and as such finds no grounds thereon to deny Scott's the 15% penalty waiver based thereon. While you note the number of days items took to complete, Scott's respectfully submits



Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 2

that it responded to and addressed many changes required by BCDC staff during the submission process and participated in frequent discussions with BCDC staff and counsel to ensure that all BCDC and Port requirements were satisfied.

Similarly, with regard to the Order's requirement (III.I) that Scott's "submit to BCDC" all past due quarterly event schedules no later than 30 days after the Effective Date of the Order, as required by Special Condition 11.B.2.c of the permit, your Letter acknowledges that Scott's **complied with that requirement**. It is important to point out that Scott's Catering Sales Director, Kelly Hodgins submitted those quarterly reports to Jennifer Koidal at CIM within the 30 day time limit, who then passed them along to BCDC pursuant to the long-established reporting procedure between Scott's, CIM and BCDC. (See, Exhibit "A".)

Scott's followed that same procedure for the monthly usage reports for March through August 2017. Notwithstanding, your Letter asserts while Scott's complied with the *quarterly* reporting requirements by emailing them to Ms. Koidal, Scott's failed to comply with *monthly* usage reporting requirements which were also sent to Ms. Koidal. Scott's submitted all required monthly data to CIM for BCDC's review as required by the Order on time as set forth below and demonstrated by the attached exhibits.

It is disingenuous for BCDC to concede Scott's compliance for submission of quarterly reports to CIM while not conceding compliance for submitting monthly reports, containing virtually the exact same data, in the same manner. CIM represented to Scott's that it was passing everything along to BCDC pursuant to the parties' two year old established procedures. (See email of Ms. Hodgins, Exhibit "B").

Scott's Submission of Monthly Pavilion Usage Statements

(1) April 2017 Usage – Submission by May 15, 2017. Your Letter switches from acknowledging Scott's compliance to a list of alleged non-compliance beginning with your assertion that Scott's "failed to submit a monthly statement listing all events held at the pavilion in April by May 15th." That assertion is demonstrably false. As shown by Exhibit "C", page 1, beginning one month *earlier than required*, Scott's commenced reporting actual pavilion use data (on April 11, 2017 reflecting usage for the month of March, 2017). Scott's aforementioned Catering Sales Director, Kelly Hodgins, also included Scott's usage report for the first quarter of 2017 (through March) and sent this information, just as she had done for the previous two years, to Jennifer Koidal, RPA, Vice President and General manager at the CIM Group in charge of management and operation for Jack London Square.

Similarly, as shown in Exhibit "A", on May 2, 2017, Scott's submitted its April 2017 pavilion usage report as required by the Order. In addition to Scott's usage for April, 2017, Ms.



Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 3

Hodgins provided the outstanding quarterly usage reports which reflected bookings for the second, third and fourth quarters of 2017 discussed above. (See, Exhibit A, pages 3-6) This undeniably proves Scott's *timely* submission of April 2017's usage report. The last page of Exhibit A is a follow up email by Hodgins to Kiodal with an amendment to the quarterly report, also accepted by BCDC.

The Order is silent on how Scott's is supposed to submit its reports to BCDC (and the Port). Ms. Hodgins will testify if called to do so (and she explained to us in her own words) as follows:

*Dear Lawrence [Goldberg/Bowles & Verna LLP],
In regard to reporting Pavilion usage*

I am writing to convey that when I took over doing the pavilion reports, from Steve Hanson in mid-2015, I emailed them directly to Jennifer Koidal. These quarterly reports were sent to Jennifer and cc'd to Liz and Ramiro every quarter. Monthly reports, which started this April, reflecting the previous months pavilion usage have also been sent directly to her.

I have always been under the assumption that Ms. Koidal is our liaison and that she forwards these reports on to BCDC. She has never corrected me and in fact we have had verbal conversations that she was sending along the reports. I have threaded a few emails (see below) showing our early correspondences from two and a half years ago. In regards to the monthly reports we started sending this spring Jenni has responded to a couple of them. She does not always acknowledge when she is in receipt of one of my emails. (Emphasis added.)

*I declare under penalty and perjury that the foregoing is true and correct.
-Kelly Hodgins (See, Exhibit B.)*

(2) May 2017 Usage – Submission by June 15, 2017. As clearly reflected in Exhibit "D", on June 5, 2017, Scott's submitted its report for May 2017 pavilion usage to Ms. Koidal. Again, Scott's report was timely and included updated quarterly reports reflecting Scott's actual pavilion bookings for the months of April through December 2017.

(3) June 2017 Usage – Submitted on June 5, 2017. Only one event took place at the pavilion during the entire month of June, 2017. Details of that event had previously been submitted, twice, to Ms. Koidal for both the Port's and BCDC's consideration. Since there was no change to Scott's pavilion usage for June 2017 from data that had previously been submitted, Ms. Hodgins did not appreciate, nor did anyone at Scott's realize, that BCDC wanted a further



Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 4

report with no change to be submitted by July 15th reflecting actual usage for June, 2017 which Scott's had already reported. Nor did anyone at BCDC ever advise Scott's or CIM that a further report was needed or that event schedules were missing for this month.

(5) Notice of Compliance - Second, Third and Fourth Quarter Event Schedule 2017. On July 17, 2017, Jennifer Koidal of CIM notified Scott's that it had complied with its obligation to submit quarterly event schedules through the end of 2017. These are the same reports for which your Letter acknowledges timely receipt. Attached hereto as Exhibit "E" is a true and correct copy of CIM's Notice of Compliance. Ms. Koidal does not mention that there is any problem with Scott's previously submitted actual usage reports, or that Scott's reporting to CIM to forward to BCDC as Ms. Koidal had discussed with Ms. Hodgins was in any way improper.

Moreover, note that Ms. Koidal's compliance letter of July 17, 2017 was copied to Adrienne Klein of BCDC, yet at no point did she, or anyone else at BCDC, claim that monthly reports (that duplicated the same data as the quarterly reports) were missing or that Scott's submission of these reports to CIM was in violation of the Order. If Ms. Klein or the BCDC felt that Scott's was in violation of the Order for not submitting these reports directly to BCDC, then fundamental fairness requires that Scott's be forewarned of this before issuance of your Letter. But not a word was uttered that failure to cc the BCDC on emails would cost Scott's \$59,304.

(4) July 2017 Usage - Submission by August 15, 2017. Exhibit "F" reflects that on August 3, 2017, Scott's timely reported pavilion usage for the month of July, 2017. In addition, Scott's included an updated report for bookings in the third quarter of 2017. Again, Ms. Hodgins sent the usage and quarterly reports to Ms. Koidal with the understanding that she would share the information with BCDC pursuant to Scott's usage reporting requirement.

(5) August 2017 Usage - Submission by September 15, 2017. Exhibit "G" reflects that on September 4, 2017, Scott's timely reported pavilion usage for August, 2017.

Based on the above and supported by the attached exhibits, several things are apparent. First and foremost is that contrary to your Letter's assertion that Scott's failed to submit the required information, Scott's did indeed submit the required event schedules, and did so before the monthly deadlines. For the one month where Scott's did not submit an independent report, June 2017, Scott's had previously submitted accurate information, *twice*, about a single event, that did not change.

Second, the Order is silent on reporting methodology and even with Mr. Zeppetello's explanation of the different reporting requirements cited in your Letter, Scott's reasonably assumed that conveyance of this data to Ms. Koidal at CIM, as it had done for the previous



Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 5

several years (with that data being passed to BCDC each time as evidenced by your acknowledgement of Scott's compliance with its quarterly reporting requirement) was still the correct procedure in this case for both its quarterly and monthly reporting requirements.

Third, your Letter states that the BCDC wanted after-the-fact monthly use reports to be sent directly to BCDC, but nowhere is that stated in the Order. Scott's has made sincere and good faith efforts to comply with the Order's use reporting requirements, and indeed has been in compliance. At no point in this reporting process extending back two years did BCDC ever assert to Scott's that because it is was only reporting monthly to CIM, that BCDC would take the position that Scott's was in violation of the Order and thus would lost the 15% penalty discount.

In fact, the first time the BCDC ever took this position in is your September 15, 2017 Letter. Mr. Zeppetello, with whom Scott's representatives have been in frequent contact, never mentioned to Scott's that there would be such a drastic penalty for reporting monthly usage data to CIM. Not only did CIM tell Scott's that it was sending the data to BCDC, but anyone on BCDC's staff could easily have contacted CIM and asked for Scott's reports to be forwarded if they did not have them since the information BCDC sought had, indeed, been reported on time. And BCDC was well aware for months (at least since July 17, 2017—Exhibit E, cc'd to Adrienne Klein and apparently as early as June 7, 2017 per Mr. Zeppetello's email) that CIM was in receipt of these monthly reports.

What makes this even more frustrating and unfair is that the BCDC received Scott's monthly usage reports from CIM (as admitted in Mr. Zeppetello's email of June 7, 2017) and the quarterly reports (CIM letter of July 17, 2017 cc'd to Ms. Klein) showing the identical information. So what is the point of penalizing Scott's an additional \$59,304 (on top of the original penalty in excess of \$300,000) when the BCDC has always had access to the reports since the Order was issued? If there was a month or two after June that BCDC didn't receive the report from CIM, why didn't the BCDC ask CIM or Scott's for them? Or forewarn Scott's that it would lose its 15% penalty discount if the BCDC was not cc'd on the emails to CIM with the reports?

It is important to put all of this into context. The overriding claim that BCDC raised a year ago through its Violation Report was that Scott's was *overusing* the pavilion and thus depriving the public of access. Scott's current reporting, of which BCDC has received copies and are attached, shows that no overuse is occurring. In fact, far fewer events have been held at the pavilion as a result of the enforcement proceedings. (An unintended side effect of this reduction, of course, is that thousands fewer people have visited Jack London Square for pavilion events or taken advantage of the public access and amenities provided.) So your Letter penalizes Scott's \$59,304 for a reporting/paperwork issue, not a public access issue, when the entire impetus for citing Scott's for violating its Permit was based on a claim of denying public access.

Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 6

This is not a situation where Scott's failed to report anything. Rather, this issue apparently boils down to who received the emails, not whether Scott's failed to report the data. In this context, penalizing Scott's \$59,304 is entirely unwarranted. Scott's is not overusing the Pavilion; is not in violation of its Permit; and is not in violation with the spirit and letter of the Order. At most, this is a minor technical reporting misunderstanding about to whom the monthly reports were to be sent.

Public Access Signs and Furniture

The second ground for your determination that Scott's is not entitled to its 15% penalty discount involves signage and furniture in the plaza and pavilion. Your Letter acknowledges that conditions observed by Adrienne Klein on a single unannounced visit might not preclude a determination that Scott's was in substantial compliance, however you state that Scott's must maintain "full compliance" to receive the waiver. But this is an impossible standard when it comes to signs and furniture that are not permanently bolted or glued to ground.

As part of the process to comply with the Order, amend the applicable permit(s) and enter into a new License and Concession agreement with the Port of Oakland, Scott's agreed to purchase all new tables and chairs for public access in the pavilion. The required 15 tables and 35 chairs were all scheduled for replacement at the time Ms. Klein observed a few missing or out of place. Shortly following Ms. Klein's visit, all 15 tables and 35 chairs were again present and accounted for, even though Scott's did not purchase any new ones at that time. Rather, the items which had been moved by the public had been located by Scott's staff and returned.

This highlights a constant struggle Scott's experiences with both furniture and signage disappearing because the pieces are, by nature, moveable. Ramiro Carabez, Scott's general manager, will testify if called to do so, on this point:

I, RAMIRO CARABEZ, declare:

Over the last few months [prior to September 19, 2017] the restaurant management, janitorial staff and I have, every day first thing in the morning, been arranging, counting, cleaning and ensuring that all 15 tables and 35 chairs are under the pavilion roof as part of our daily opening routine. On August 29th as I was opening I went to the pavilion and counted 15 tables and 35 chairs. It is important to note that we have experienced an enormous increase on the homeless population and many times we have to go all over the square to retrieve the tables and chairs that they take. On September 14th 15 tables and 35 chairs were counted, but one of the standing movable signs was missing and we were unable to find it, immediately after, one replacement was ordered and it should



Lawrence J. Goldzband
BCDC Executive Director
September 27, 2017
Page 7

arrive by the end of this month (September 30th) Should you have any questions, please feel free to contact me. Thank you. (See, Exhibit "H".)

Scott's has gone to the extraordinary length of ordering extra signs to have quick replacements ready when they disappear. Your requirement of "full compliance" is an impossibility in this context as Scott's does not control the actions of members of the public. The best Scott's can do is send its staff out into the surrounding area every day to search for missing furniture and signs and carry them back to the pavilion when pieces are found, or replace them when items are stolen. As such, it is fundamentally unfair to deny Scott's the 15% penalty discount based on the temporary disappearance of tables, chairs and signs when Scott's is doing everything it can to provide for public access and enjoyment.

Further Review by the Commission / Scott's Demand for a Hearing

Your Letter states that Scott's has not complied with both the Order and the issues originally raised in the Violation Report. Section III.J. of the Order states that if the Executive Director concludes that Scott's is not "in compliance with the terms of the Order", that a hearing with the full commission "shall" be scheduled. If you refuse to accept Scott's objections to your Letter, then Scott's insists that this matter be scheduled for hearing before the full Commission immediately.

We have little doubt that the Commission did not contemplate that BCDC staff would take such a narrow and technical view of Scott's obligations under the Order. Yet your Letter imposes a penalty of \$59,304 on Scott's for (1) not cc'ing BCDC on its emails to CIM reporting monthly usage—even though BCDC staff were aware the monthly reports were going to CIM, never suggested that doing so would subject Scott's to a \$59,304 penalty, and BCDC received copies of the reports anyway; and for (2) acts by members of the public removing chairs and tables from the Pavilion—over whom Scott's has no control—based on a one time, unannounced visit by Ms. Klein. This is unwarranted.

We would appreciate your response, and hopeful reversal of your finding, at your earliest convenience. Thank you.

Very truly yours,


MICHAEL P. VERNA

cc: Marc Zeppetello, Esq. (BCDC)
Joshua Safran, Esq. (Port of Oakland)
Elizabeth Gallagher (Scott's)

EXHIBIT A

From: Kelly Hodgins
Sent: Tuesday, May 02, 2017 5:27 PM
To: jkodal@climgroup.com
Cc: Liz Gallagher
Subject: New Monthly Report Scott's Pavilion Usage 2017 - Report for April & Updated Quarter Reports

Event name	Date	Set up begin	Set up end time	Event Begin	Event End	Take down	Take down end	Event Hours	Total Hours	Guests
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April 2017

Saturday	Mendoza Wedding	4/1/2017	15:00	17:00	17:00	24:00:00	24:00:00	2:00	7	11	187
Saturday	ESCUELA BILINGUE INTERNACIONAL	4/8/2016	15:00	18:00	18:00	0:00	0:00	0:00	6 hours	11 hours	250
Saturday	Carol Yang & Kevin Park Wedding Reception	4/29/2017	14:00	16:00	16:30	20:00	20:00	22:00	3.50	7.50	300
Totals	3 Events										737

Jenni—We had three pavilions during the month of April.
 Have a great evening
 Sincerely,

Kelly Hodgins
 Catering Sales Director



Scott's Jack London Square

#2 Broadway

Oakland, CA 94607

O 510-444-5969 / C 510-384-0463 / E kellyh@scottsjs.com

From: Kelly Hodgins
Sent: Thursday, May 04, 2017 5:15 PM
To: jkoldal@clmgroupp.com
Cc: Ramiro Carabez
Subject: Scott's Updated Quarter Reports

Hi Jenni,

I need to add one more pavilion to this 2nd Quarter.

We will be using the space on Sunday, May 14th—please see revisions

Have a great evening

Sincerely,

Kelly Hodgins
Catering Sales Director



Scott's Jack London Square
#2 Broadway
Oakland, CA 94607
O 510-444-5969 / C 510-384-0463 / E kellyh@scottsis.com

We invite you and a guest to attend a complimentary
Roundtable Luncheon. Please call with the day you would like to attend.

EXHIBIT B

Lawrence Goldberg

Subject: Email to Jennifer Koidal sent 5/2/17/ Letter of Declaration

From: Kelly Hodgins [mailto:kellyh@scottsjls.com]
Sent: Tuesday, September 19, 2017 4:06 PM
To: Lawrence Goldberg <lgoldberg@bowlesverna.com>; Liz Gallagher <Lizg@scottscorp.com>
Subject: RE: Email to Jennifer Koidal sent 5/2/17/ Letter of Declaration

Dear Lawrence,
In regard to reporting Pavilion usage

I am writing to convey that when I took over doing the pavilion reports, from Steve Hanson in mid-2015, I emailed them directly to Jennifer Koidal.

These quarterly reports were sent to Jennifer and cc'd to Liz and Ramiro every quarter. Monthly reports, which started this April, reflecting the previous months pavilion usage have also been sent directly to her.

I have always been under the assumption that Ms. Koidal is our liaison and that she forwards these reports on to BCDC.

She has never corrected me and in fact we have had verbal conversations that she was sending along the reports.

I have threaded a few emails (see below) showing our early correspondences from two and a half years ago.

In regards to the monthly reports we started sending this spring Jenni has responded to a couple of them.

She does not always acknowledge when she is in receipt of one of my emails.

I declare under penalty and perjury that the foregoing is true and correct.

-Kelly Hodgins

From: Steven Hanson [mailto:hansonsteven@gmail.com]
Sent: Friday, January 16, 2015 4:46 PM
To: jbraun@portoakland.com; 'Jennifer Koidal'
Cc: Kelly Hodgins; Liz Gallagher
Subject: Public Pavillion Quarterly submittal for January through March 31 2015
Dear Julie and Jennifer

Attached is the Public Pavilion's bookings for private events though the end of the first quarter as provided to me by the catering department at Scott's.

I apologize for the fact that this is tardy, there have only been two scheduled events thus far this year.

I was working on this format for this report.

I will continue refining this report in the future to obtain and present additional qualitative and quantitative information.

Best wishes for the new year.

Thanks

Steve Hanson

hansonsteven@gmail.com

415-314-0172

My website:

<http://sites.google.com/site/hansonstevenwork/>

From: Kelly Hodgins

Sent: Tuesday, June 02, 2015 2:14 PM

To: Jennifer Koldal (jenni@jacklondonsquare.com)

Cc: Ramiro Carabez; Liz Gallagher

Subject: Revisions for 2nd quarter Pavillon Report from Scott's JLS

From: Jennifer Koldal [<mailto:jenni@jacklondonsquare.com>]

Sent: Sunday, September 27, 2015 1:37 PM

To: Kelly Hodgins

Cc: Ramiro Carabez

Subject: RE: Pavillon update

Thank you – I will update schedule for Q3.

Jennifer Koldal, RPA General Manager

JACK LONDON SQUARE

472 Water Street - Oakland, CA 94607

T 510.645.4292 x 210 F 510.645.4760

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From: Kelly Hodgins [<mailto:kellyh@scottsjls.com>]

Sent: Friday, September 25, 2015 3:02 PM

To: Jennifer Koldal

Cc: Ramiro Carabez

Subject: Pavillon update

Hi Jenni

We have a last minute memorial tomorrow in the pavilion.

The guests will arrive at 2 and will hold Nick's celebration of life until 6pm

EXHIBIT C

From: Kelly Hodgins
Sent: Tuesday, April 11, 2017 4:32 PM
To: lkoldal@climgroup.com
Cc: Liz Gallagher; Ramiro Carabez; Cynthia Warrender
Subject: New Monthly Report Scott's Pavilion Usage 2017 - Report for March & 1st Quarter

March 2017												
Friday	The Salvation Army Alumni Dinner	3/24/2017	16:00	18:00	18:00	21:00	21:00	23:00	3.00	7.00	240	
Friday	8th Annual Powerful Women of the Bay Awards Luncheon	3/31/2017	9:00	11:00	11:00	14:00	14:00	16:00	3.00	7.00	250	

EXHIBIT C

EXHIBIT D

From: Kelly Hodgins
Sent: Monday, June 05, 2017 12:10 PM
To: jkoddai@ctimgroup.com
Cc: Liz Gallagher; Ramiro Carabez
Subject: New Monthly Report Scott's Pavilion Usage 2017 - Report for May & Updated Quarter Reports

Hi Jenni,
 Here is the May report reflecting 5 days & 6 events for Scott's Pavilion usage

Sincerely,

Kelly Hodgins
 Catering Sales Director



Scott's Jack London Square
 #2 Broadway
 Oakland, CA 94607
 O 510-444-5969 / C 510-384-0463 / E kellyh@scottssls.com

May 2017												
Wednesday	Alternatives in Action	5/3/17	9:00	11:00	11:00	16:00	16:00	18:00	5	9	250	
Thursday	East Bay La Raza Lawyers Association	5/4/17	16:00	18:00	18:00	22:00	22:00	24:00	4	8	200	
Saturday	Munster Zukei Taniguchi's Retirement Buddhist Temple of Alameda	5/6/2017	15:00	18:00	18:00	0:00	0:00	0:00	6 hours	11 hours	250	
Saturday	Annie & Erik's Wedding Reception	5/13/2017	11:00	13:00	13:00	16:30	16:30	18:30	3.50	7.50	250	
Sunday	Mother's Day	5/14/2017	6:00	8:00	9:00	16:00	16:00	18:00	7.00	11.00		
Saturday	Sharon's 70th Birthday	5/20/2017	9:00	11:00	11:00	15:00			4.00	6.00	100	
Saturday	Zoe's Baptism Celebration	5/20/2017			18:00	0:00	0:00	2:00	6.00	8.00	150	

EXHIBIT D

[illegible]

EXHIBIT E

CIM

July 17, 2017

Ms. Kelly Hodgins
c/o Scott's Catering
2 Broadway
Oakland, CA 94607

RE: BCDC Permit 19-85(B)
Notice of Compliance – Second, Third, and Fourth Quarter Event Schedule 2017

Dear Kelly,

Upon review, your revised calendar of events submitted on June 14, 2017 for second, third, and fourth quarter are now in compliance based on the following:

- The revised calendar, with the removal of one event in September, is within the allowable percentage of private use for events on weekend days and nights as stipulated in Exhibit A.

Should you have any questions or concerns, please do not hesitate to contact me to discuss.

Cordially,
Jack London Square (Oakland) Operator, LLC
a Delaware limited liability company
(as managing agent for the Port of Oakland)



Jennifer Koidal, RPA®
Vice President
General Manager

cc Liz Gallagher, Scott's Catering, Walnut Creek
Daria Szalla, CIM Group
Anna Wah, CIM Group
Julia Braun, Port of Oakland
Dorin Tiutin, Port of Oakland
Adrienne Klein, BCDC

EXHIBIT E

EXHIBIT F

Sent: Thursday, August 03, 2017 4:34 PM

Cc: Liz Gallagher; Ramiro Carabez; Cynthia Warrender

Subject: new monthly report: July Pavilion dates for Scott's JLS Pavilion 3rd quarter 2017.xlsx

Scott's JLS used the pavilion the approved 4 times in the month of July.

[illegible]

EXHIBIT F

EXHIBIT G

Subject: New monthly report: August Pavilion dates for Scott's JLS Pavilion 3rd quarter 2017.xlsx

Hope you are having a great weekend

[illegible]

EXHIBIT H

Lawrence Goldberg

Subject:

FW: See below

From: Ramiro Carabez

Sent: Tuesday, September 19, 2017 4:03 PM

To: Liz Gallagher <Lizg@scottscorp.com>

Subject:

I, RAMIRO CARABEZ, declare:

Over the last few months the restaurant management, janitorial staff and I have, every day first thing in the morning, been arranging, counting, cleaning and ensuring that all 15 tables and 35 chairs are under the pavilion roof as part of our daily opening routine. On August 29th as I was opening I went to the pavilion and counted 15 tables and 35 chairs. It is important to note that we have experienced an enormous increase on the homeless population and many times we have to go all over the square to retrieve the tables and chairs that they take. On September 14th 15 tables and 35 chairs were counted, but one of the standing movable signs was missing and we were unable to find it, immediately after, one replacement was ordered and it should arrive by the end of this month (September 30th) Should you have any questions, please feel free to contact me. Thank you.



Ramiro Carabez

General Manager

ramiroc@scottsjls.com

2 Broadway

Oakland, CA 94607

www.scottsjls.com